IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 647 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KISHORE BHAI DOSHI

Versus

THE STATE OF GUJARAT

Appearance:

MR YN RAVANI for Petitioners

MR SK PANDYA Ld. APP for Respondent No. 1 & 2

MR DN PANDYA for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 20/10/2000

ORAL JUDGEMENT

1. The present petition has been filed by the petitioners abovenamed under Article 14, 19, 21 and 226 of the Constitution of India read with section 482 of Code of Criminal Procedure, 1973 for quashing the FIR

dated 27.4.2000 filed before the A-Division Police Station Rajkot at CR No. 133/2000 by the second respondent herein for the offence punishable under sec. 186, 189, 406, 420 and 114 of IPC against the present petitioners.

2. The facts of the case may be briefly stated as follows:

3. The second respondent Mr. Gupta is shown to be Assistant Engineer in the office of Public Works Department, Rajkot. He seems to have filed the aforesaid FIR before the aforesaid police station against three petitioners for the aforesaid offences on main allegation that the first petitioner had kept a contract for electrification in the Medical College at Rajkot. That the complainant, as an officer of the Government, was required to check the quality of the materials used by the first petitioner in the said work and, therefore, the complainant tried to collect the material for the said purpose. At that time, the first petitioner along with four other unknown persons had obstructed the second respondent and the second respondent was prevented from checking the quality of the goods used in the said work. It is further contended that the petitioners no. 1, 2 and 3 had given threat to the second respondent.

4. It is further contended in the said FIR that many agencies were not using the proper goods for electrification of different work and, therefore, the second respondent had occasion to have hot exchange of words with other agencies. It is further alleged in the FIR that the present petitioners have used duplicate penal in a sum of Rs. 50 lakhs in ST Bus Stand of Rajkot Medical College at Rajkot. That even the Dean of the Medical College has also come to know about the fact that duplicate goods have been used in the said work. That even he Electrical Inspector deputed by the Government for the checking purpose was also not allowed to collect the sample on 10.1.2000 at 9.00Am and four unknown anti social elements were kept present and they given threat to Assistant Wireman and others and they were made to run away from the spot.

5. Second respondent has further contended that when he went to the spot, it was noticed that those wireman and other persons had run away on account of fear from those anti social elements and, therefore, inspection could not be undertaken with respect to the duplicate goods used in the said work and, therefore, there was

obstruction in his official duty caused by the petitioners.

6. It is further contended in the FIR that with a view to prevent second respondent from making an effective representation before the Government and pressure was brought on him from several corners. That even the second respondent and the members of his family carried risk of their lives. That even the telephonic threats were given to him on 12.4.2000. That, therefore, it was necessary to make a representation to the Police. That in case, there would be any physical violence on the second respondent, the responsibility would be of the present petitioners.

7. It is further contended that the first petitioner had given him a challenge that since last 50 years, he has been using the duplicate material and he has used same material in the aforesaid Medical College work and even in future he would be using duplicate material in the said work as was done by him in past and nobody will be able to stop him while doing the said work. It is further contended that the petitioners are in possession of certain cable pieces which have been stolen from the Medical Colleges. That the petitioners are also in possession of the duplicate goods.

8. There is further allegation against the first petitioner that he was in a habit of liquor with which we are not concerned for the purpose of this matter.

9. It is alleged in the FIR that with a view to over come heavy expenditure incurred by the petitioners for their own purpose, they are using duplicate goods and they have been cheating the Government in crores of rupees. Therefore, it is contended that appropriate actions may be taken in the matter.

10. Therefore, there are allegations in the FIR that the present petitioners have been using duplicate material and goods in the electrification work of the Government Medical College at Rajkot and,therefore, the petitioners have cheated the Government as aforesaid.

11. The petitioner have filed this petition for quashing and setting aside of the said FIR.

12. Notice was issued and Mr. SK Patel learned APP for the State has appeared.

13. In the meantime, an application was made for

joining Executive Engineer, R & B, at Rajkot as respondent no. 3. The said application was allowed and he was joined as respondent no. 3. He is being represented by Mr. G. S. Vyas.

14. I have heard the learned advocates for the parties and have perused the papers.

15. Learned advocate for the petitioners has argued at length that the FIR has been filed on account of malafide intention. Now, it has to be seen that the informant is a public servant working in the Government Department as Assistant Engineer and it is his case that he had occasion to check the work in his official capacity and,, there he found that some duplicate material was used contrary to the contract between the petitioner and the Government. Therefore, if otherwise, the offence is made out then the element of malafide will not carry any importance.

16. It has also been contended that there is a contract between the petitioners and the State Government. The contract is in writing. It is further contended that there is specification in the contract that in case,there is any dispute between the parties, the matter shall be referred to the Arbitrator and, therefore, the criminal complaint would not lie against the petitioners.

17. Now, so far as the aforesaid contentions are concerned, there is no difficulty. There may be a contract between the petitioner and the Government having an Arbitration clause for referring the dispute to the Arbitrator, but that dispute referable to the Arbitrator would be a dispute of civil nature, there cannot be a reference of dispute of criminal nature to the Arbitration. In other words, simply because there is a provision for reference of dispute between the parties to Arbitration, it does not and cannot mean that there cannot be a criminal prosecution against the petitioners.

18. Indirectly, it has also been argued that there is no provision for filing criminal prosecution. Now, there cannot be any agreement between the parties that in case of dispute, a particular party will refer the matter to the Criminal Court or Police. Even if there is no agreement for referring the matter to the police or to the criminal court, the parties to the agreement can never be prevented from initiating criminal proceedings against the rival parties.

19. It is further contended that the Police Inspector has filed affidavit and the affidavit shows that certain samples have been taken but, they did not represent the goods used by the present petitioners. Now, it would be again a matter of dispute. The Investigating Officer will have to take into consideration the contract between the parties. The Investigating Officer will also consider as to what goods are actually required to be used and placed in the said Medical College work by the petitioners. Even the materials used by the petitioners are found to be duplicate, then the reports of the experts may be relevant against the petitioners. If those materials have not been used by the petitioners or that according to the contract, the said materials were not required to be used by the petitioners and some other agencies have used the same, then the said report cannot be used against the petitioners and same way the Investigating Officer will naturally not use those materials against the petitioners. Even if,the Investigating Officer does something wrong and uses those materials against the petitioners, than the court in which the matter may be filed will have opportunity to look into the matter to consider if or not, those materials have been used by the petitioners and if so, whether the materials so used were duplicate or they were genuine.

20. These things can be collected only when some materials are placed on record and the materials can be placed on record only when the investigation is permitted to be gone into.

21. In the present case, the FIR has been filed in April, 2000 and after the application has been filed, stay order has been obtained against the investigation in question, therefore, when the investigation has not proceeded further to a considerable extent, it may not be possible for the Investigating Agency to say with certainty as to where the matter stands.

22. It has also been argued that certain running bills were prepared by the R & B Department after examining materials and work done by the present petitioners. That bills have been approved by the Executive Engineer who is higher authority than the present respondent no. 2. That even the final bill was also prepared on 18.12.1999.

23. Simply because running bills have been passed and simply because the final bill has also been passed that

would not bring the matter to an end. There may not be an effective checking at the time of passing of those bills. It may not be possible for the officers of the department to go into detailed checking of the material used. Sometime, the material used may be duplicate, but they may appear like a genuine one, and therefore, it cannot be decided from the bare look at the material as to whether or not they are really genuine. Therefore, for ascertaining the quality of the materials, it would be necessary to refer them to the expert. This can be done only if investigation is permitted.

24. It has also been argued that the present respondent no. 2 is a subordinate officer and he has not obtained permission of his higher officer for filing FIR. Now, so far as the FIR is concerned, it may be filed by even a stranger if it relates to cognizable offence and even a stranger can put the police machinery into motion and if it is found that there is a case of cognizable offence, the Investigating Officer can undertake an investigation even if the persons filing the FIR may not be technically competent to do so.

25. IN the present case,there are some allegations against the third respondent and it has been stated that he is also involved in the matter, but for the present, it is not necessary to consider that aspect of the matter for deciding the present petition under sec.482 of the Code of Criminal Procedure, and, therefore, no discussion is undertaken with respect to the role said to have been played in the matter by the third respondent. Therefore, even it was not necessary to hear the learned advocate for the contesting respondent no. 3 in the matter.

26. It has also been contended that the materials are being strictly checked and examined by the officers of the Government. At the same time, it has to be seen that each and every items may not be closely checked and verified. However, when the allegations are there, there would be good scope for the Investigating Officer to collect the sample and obtain reports thereon.

27. It is further contended that the agreement between the petitioners and the Government provides for payment for damages and compensation, in case, the goods of inferior quality is used. This does not again mean that no criminal prosecution can be launched if there is prima-facie case of cheating and other criminal offences.

28. It has also been argued that the agreement

further contemplates that if the goods used are not according to the specifications, than the petitioners had to replace the same. This will also not absolve the petitioners from criminal liability, if there is any.

29. It is further argued that the offence punishable under sec. 186 of IPC is such in respect of which, a complaint is necessary and the court cannot take cognizance of the offence unless complaint is filed. Now, here the case of offence punishable under sec. 186 of IPC is coupled with other offences, therefore,it would be for the Investigating Officer to consider if having regard to the facts and circumstances of the case and to the materials collected, it would be just and proper and legal to submit charge-sheet,if any, even with respect to the offence punishable under sec. 186 of IPC before the Court.

30. Even if the charge-sheet is wrongly filed, than the learned Magistrate receiving the charge-sheet and other papers will also be required to undertake scrutiny on the point as to whether or not, he could take cognizance of the said offence.

31. The petitioners will naturally be at liberty to take all these contentions if and when charge-sheet is filed and charge framed against the petitioners.

32. It has been contended that detailed information has not been supplied showing the ingredients of the offences committed by the petitioners. Now, after all, the petitioner is though a technical hand, his knowledge with respect to the legal aspect may be limited to some extent, therefore, detailed description of ingredients of offence may not be known to him and he may not have been in a position to give detailed FIR showing the ingredients in detail with respect to the offence. The materials placed by him before the police go to show that the petitioners have been using the duplicate electrical goods and thereby they have been cheated the State Government. In that view of the matter,it cannot be said that the second respondent has not provided sufficient material for consideration of the Investigating Agency.

33. A reliance has been placed on a case of Hridaya Ranjan Pd. Verma and ors., vs. State of Bihar and Anr., reported in AIR 2000 SC 2341, in order to argue that the FIR does not disclose material ingredients of the offence of cheating. The said discussion is found in para-13 of the judgment.

34. As stated above, the second respondent is after all, a technical person in his own field and if he has broadly given facts showing as to how the cheating has taken place than in that case, it cannot be said that the FIR does not provide sufficient material to the Investigating Agency for proceeding ahead with the investigation.

35. Suffice it to say that it cannot be said at present that no offence is made out from the FIR and, therefore, the petition should be quashed.

36. In my opinion, therefore, when there is specific allegation in the FIR that the petitioners have been using duplicate goods than this is clearly a mater which can be investigated by collecting the samples and by referring them to the experts. The opinion can be obtained from the expert and on the basis of such experts' opinion, it can be very well ascertained if or not there is element of cheating. An attempt was also made to argue that there must be dishonest intention of cheating at the stage of entering into the contract. Now, when the allegations of cheating have been made, it would indirectly mean that the petitioners had intention of cheating and had possessed dishonest intention right from the beginning. Ultimately, it would be a matter of investigation and after investigation, this fact can also be appropriately dealt with by the Investigating Agency.

37. Certainly, it can be said that when Investigating Officer undertakes investigations, it would be the duty of the Investigating Officer to find out as to whether the ingredients of the offence alleged in the FIR have been satisfied. Charge-sheet can be filed only when those ingredients are satisfied and not otherwise.

38. In my opinion, therefore, it cannot be said that no offence at all has been made out. In that view of the matter, the FIR cannot be quashed and set aside. Lastly, there is no merits in the present petition and it is accordingly required to be dismissed.

39. In the result, the present petition is ordered to be dismissed and the notice is ordered to be discharged.

(D.P. BUCH, J.)

40. After the aforesaid order was pronounced, learned advocate for the petitioner prayed that interim relief has been granted at the beginning and since the petitioners desire to approach the higher forum, the interim relief granted earlier may be continued for a further period of four weeks. Having regard to the facts and circumstances of the case and since the interim relief has been continued for quite some time, it is directed that the interim relief granted earlier shall be continued for a further period of four weeks from today.

(D.P. BUCH, J.)
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